

**RECORD WITHOUT FEE
PURSUANT TO GOV'T CODE § 6103**

Recording Requested by:
Office of the City Attorney
City of Santa Clara, California

When Recorded, Mail to:
Office of the City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Form per Gov't Code § 27361.6

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

**AGREEMENT AND COVENANT RUNNING WITH THE LAND
(TO CONSTRUCT AND MAINTAIN A 3'-9" HIGH IRON FENCE AND GATE
ENCROACHING INTO PUBLIC RIGHT-OF-WAY)
[Restriction on 1375 Jefferson Street, Santa Clara, CA]**

PREAMBLE

This Restrictive Covenant Running with the Land ("Covenant") is made and entered into on this ____ day of _____, 2008 ("Effective Date"), by and between Bernadette M. Delgado ("Owner"), and the City of Santa Clara, California, a chartered California municipal corporation ("City").

RECITALS

- a. Owner is the owner of real property located at 1375 Jefferson Street in the City of Santa Clara, California ("Property"), and is shown on the 2007-08 Santa Clara County Property Tax Roll as Assessor's Parcel No. 269-03-049. Property is also known as that certain parcel as described in Document No. 16692898, Santa Clara County Records.
- b. Whenever the term "Owner" is used, it shall refer collectively to the Owner(s) signing this Covenant, and/or Owner's assigns and successors in interest. City and Owner may be referred to herein collectively as the "Parties" or individually as a "Party."

AGREEMENT PROVISIONS

The Parties agree as follows:

1. The above Preamble and Recitals are expressly incorporated into and made a part of this Agreement as though fully set forth herein below.
2. Owner proposes to construct and maintain certain private improvements ("Improvements") in the street right-of-way described and limited to the following:

A 3'-9" high iron fence and gate encroaching 1'-4" into Jefferson Street. The

boundary of encroachment is shown on attached Exhibit "A" (Tracing No. 11,703-A) attached hereto and incorporated herein by this reference.

3. Owner shall maintain, at Owner's sole cost and expense, the Improvements in a safe condition in compliance with City ordinances, rules, regulations, and such terms and conditions as all of the aforesaid are required by City from time to time. City approval of Improvements does not constitute approval on behalf of public utility companies. Approval of public utility companies shall be obtained separately by Owner. If, in the future, Improvements are removed, the area they are removed from shall be left in a safe condition. Removal shall be at Owner's sole cost and expense and performed under a Street Opening Permit issued by City.
4. Owner agrees to permit public utility companies, the City, and their respective officers, employees, and agents to enter upon Property so that there is access to the street right-of-way for the purpose of installation, modification, repair, maintenance, removal or replacement of City-owned public improvements, facilities or properties situated in the street right-of-way. Owner waives any and all claims for damages or liabilities in connection therewith for property damages incurred as a result of City operations.
5. Owner agrees to pay City for any damages to City owned facilities caused by construction or maintenance of Improvements by Owner in the street right-of-way.
6. Owner agrees to modify, maintain, repair, or remove on written demand of the City Engineer (or his designee) at no cost to the City, Improvements (or portion thereof) which prohibit or interfere with the City's ability to maintain, repair, or replace its public facilities located in the street right-of-way. If Owner fails to modify, maintain, repair, or remove Improvements (or portion thereof) upon demand of City, City shall cause the work to be done and bill Owner. Owner agrees to reimburse City for the cost and expense incurred in performing the work required.
7. If Owner fails to pay City for damage to City facilities or for City caused work the Owner failed to perform upon City demand, City may cause a special assessment to be levied against Property which shall constitute a lien thereon until paid in full. Said assessment, at the option of City, may be placed upon the tax rolls and treated and collected in the same manner as other taxes upon Property. Said assessment procedure for collection of expenses incurred by City upon the failure of Owner to remove Improvements (or portion thereof) is expressly not intended to limit any other remedy available at law or in equity to City.
8. Owner shall indemnify, defend, and save harmless the City, its officers, employees and agents from any claims, demands, loss, liability, injury, damage, expense or cost (including reasonable attorney's fees) however same may be caused, which may be sustained, incurred, or asserted against City because of and/or arising from the City permitting Owner to install and/or maintain Improvements in the street right-of-way.
9. As used herein, street right-of-way includes not only the roadway traveled by vehicles but also the curb, sidewalk and area between and beyond the sidewalk, if any, to the private property lines or exterior line of right-of-way easements.
10. Each and every covenant made by Owner and/or City in this Agreement is made for the direct benefit of the respective lands described below or the interests in such lands held by the Parties,

their heirs, assigns and/or successors in interest, and shall run with said respective lands or interest in lands, and if applicable, the responsibilities and burdens thereof are imposed on and shall run with said respective lands or interest in lands held by the Parties, their heirs, assigns and successors in interest.

11. The land of Owner which is burdened by this covenant and which will have the responsibility and burden for the modification, maintenance, repair, or removal of the Improvements is the above mentioned Property.
12. The land of City which is benefited by the covenants included in this Agreement is Jefferson Street, a public street owned by City.
13. Enforcement, either to restrain violation or to recover damages, shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant created through this Agreement.
14. Invalidity of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

[The last paragraph, Paragraph 15, concerning recordation of this Covenant, and the signature blocks are on page 4]

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15. This Agreement shall be recorded by City in the Office of the County Recorder of Santa Clara County.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

HELENE L. L. EICHTER
City Attorney

JENNIFER SPARACINO
City Manager

ATTEST:

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax Number: (408) 241-6771

ROD DIRIDON, JR.
City Clerk

“City”


Bernadette M. Delgado

Address: 1375 Jefferson Street
Santa Clara, CA 95050

Telephone: (408) 241-3721

Fax Number: () - (N/A)

“Owner”

ALL LEGAL OWNER(S) OF PROPERTY MUST SIGN THIS DOCUMENT. IF OWNER(S) IS A CORPORATION, THE COMPLETE LEGAL NAME AND CORPORATE SEAL OF THE CORPORATION AND CORPORATE TITLES OF THE PERSONS SIGNING FOR THE CORPORATION SHALL APPEAR ABOVE. WRITTEN EVIDENCE OF AUTHORITY OF PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF CORPORATION, PARTNERSHIP, OR JOINT VENTURE, OR ANY OTHER ORGANIZATION OTHER THAN A SOLE PROPRIETORSHIP SHALL BE ATTACHED.

ATTACH THE ALL-PURPOSE NOTARY ACKNOWLEDGMENT FORM FOR THE PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF THE OWNER(S).

California All-Purpose Acknowledgment

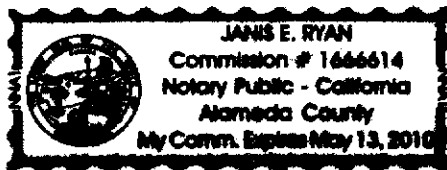
STATE OF CALIFORNIA)

COUNTY OF Alameda) ss

On September 11, 2000, before me, Janis E. Ryan, Notary Public, a Notary Public in and for said County and State, personally appeared Bernadette M. Delgado, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

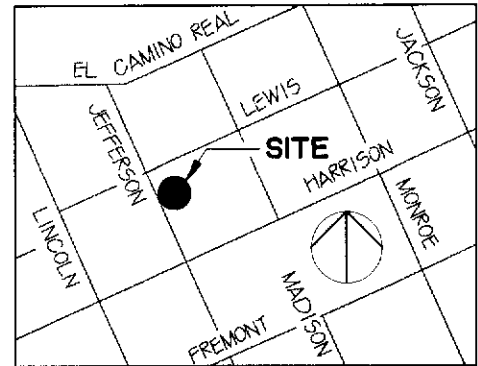
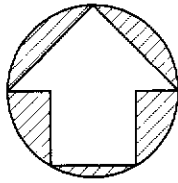
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

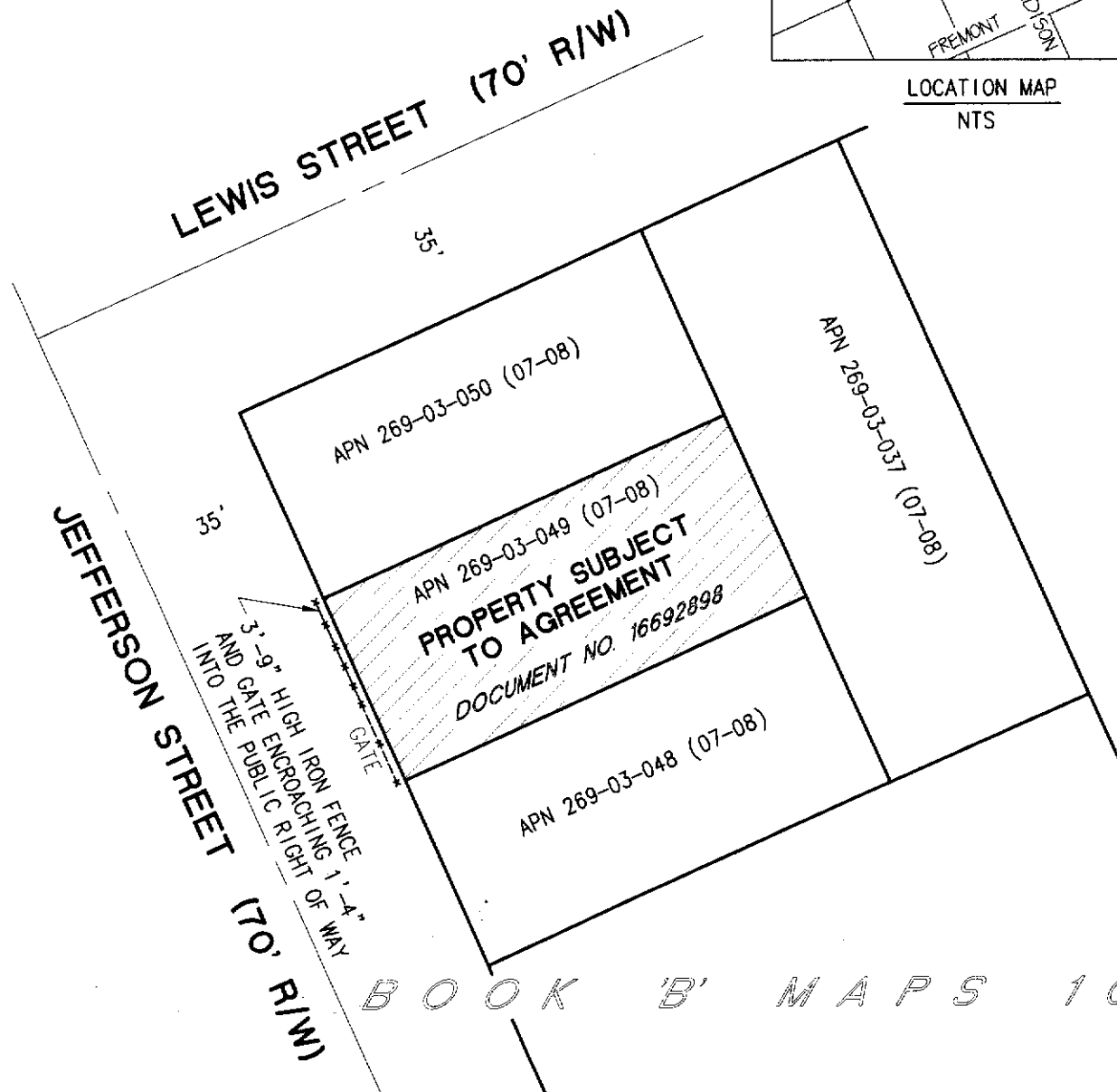


Janis E. Ryan
NOTARY PUBLIC, STATE OF CALIFORNIA

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT.



LOCATION MAP
NTS



BOOK 'B' MAPS 103

EXHIBIT 'A'

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Revised		
Drawn By	ND	7-24-08
Checked By	DJM	8-18-08
Approved By	<i>Rajeev Batra</i>	Date 8-18-08
RAJEEV BATRA		
DIRECTOR OF PUBLIC WORKS/CITY ENGINEER		

CITY OF SANTA CLARA

AGREEMENT AND COVENANT RUNNING WITH THE LAND
(PRIVATE IMPROVEMENT ENCROACHING INTO THE PUBLIC R/W)
1375 JEFFERSON STREET

Scale	1" = 40'
Ref.	SC 18,315
Tracing No.	11,703-A

11,703-A